

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DAVID L. COUNTS,

Plaintiff,

vs.

KIM HALVERSON, in her individual  
capacity; UNKNOWN DOC  
EMPLOYEES, in their individual and  
official capacities; UNKNOWN  
DEPARTMENT OF HEALTH  
EMPLOYEES, in their individual and  
official capacities; UNKNOWN DOC  
CONTRACTORS, in their individual and  
official capacities; and SUMMIT FOOD  
SERVICE,

Defendants.

4:23-CV-04103-KES

ORDER DISMISSING CASE

Plaintiff, David L. Counts, Kim Halverson, in her individual capacity, and Summit Food Service jointly move to dismiss this action and all claims asserted against Halverson and Summit Food Service with prejudice and without costs to any party. Docket 377. The parties' joint motion (Docket 377) is granted, and Counts's claims against Halverson and Summit Food Service are dismissed upon the merits with prejudice, without further notice or hearing, and without costs to any party.

Counts moves for leave to dispute Docket 364, one of Halverson and Summit Food Service's responses to some of his motions that are no longer

pending. Docket 378. Counts's motion for leave to dispute Docket 364 (Docket 378) is denied as moot.

Counts's complaint names as defendants unknown DOC employees, unknown Department of Health employees, and unknown DOC contractors. Docket 1 ¶¶ 43–45. Counts has not identified these unknown defendants. Federal Rule of Civil Procedure 21 provides that the court “on its own, . . . may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. Counts's deadline to move to join additional parties was June 30, 2025. Docket 371 at 9. Counts has not filed a motion to amend identifying and adding any of the unknown defendants. *See McCrudden v. United States*, 763 F. App'x 142, 145 (3d Cir. 2019) (“The case law is clear that [f]ictional parties must eventually be dismissed, if discovery yields no identities.” (internal quotation omitted, alteration in original)). Further, the time for service under Federal Rule of Civil Procedure 4(m) has run. Counts's claims against the unknown DOC employees, unknown Department of Health employees, and unknown DOC contractors are dismissed without prejudice.

Thus, it is ORDERED:

1. That the joint motion for dismissal (Docket 377) is granted, and Counts's claims against Halverson and Summit Food Service are dismissed upon the merits with prejudice, without further notice or hearing, and without costs to any party.
2. That Counts's motion for leave to dispute Docket 364 (Docket 378) is denied as moot.

3. That Counts's claims against the unknown DOC employees, unknown Department of Health employees, and unknown DOC contractors are dismissed without prejudice.

Dated July 1, 2025.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE